

MATSUMOTO, J.

ORIGINAL

POLLAK, M.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 19-4139

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HARRY CHERRY,

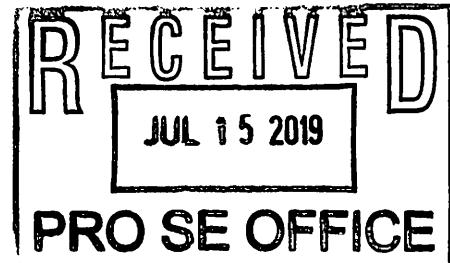
Plaintiff,

-against-

ALEXANDRIA OCASIO-CORTEZ,

Defendant,

Civil Action No. _____



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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT:

1. Plaintiff, Harry Cherry ("Mr. Cherry" or "Plaintiff"), is a Jewish journalist. Importantly, Mr. Cherry has criticized Defendant, Alexandria Ocasio-Cortez ("AOC" or "Defendant"), via Twitter on multiple occasions, most recently in response to AOC's claims that the United States Government is operating "concentration camps" along the U.S. border, similar to those in the Holocaust.
2. Mr. Cherry has been blocked by Defendant from the @AOC account because of opinions he expressed regarding AOC and in reply to Defendant's tweets, often fact-checking statements made by her in real time.
3. Because of Plaintiff's criticisms of AOC, Mr. Cherry has been prevented or impeded from viewing AOC's tweets, from replying to the tweets, from viewing discussions associated with the tweets, and from participating in those discussions.
4. Alexandria Ocasio-Cortez is a popular elected member of the United States House of Representatives. AOC maintains an active Twitter account with the handle

@AOC. This is AOC's verified Twitter account and is the account to which AOC regularly posts and engages in both news, events, political speech, and advocates for her policy positions. AOC uses Twitter as an important public forum for speech.

5. In an effort to suppress contrary views, Defendant has excluded Twitter users who have criticized AOC and her positions as a Congresswoman via "blocking." This practice is unconstitutional and must end.
6. This very practice has been litigated with regard to President Donald Trump blocking individuals on Twitter, and has been found unconstitutional.
7. The Supreme Court recently acknowledged that social media is a "vast democratic forum" analogous to traditional public forums, such as parks. *See Packingham v. North Carolina*. As the Second Circuit Court of Appeals in Manhattan recognized on July 9, 2019, it is unconstitutional for a political figure to "engage in viewpoint discrimination by utilizing Twitter's 'blocking' function to limit certain users access to [a] social media account, which is otherwise open to the public at large, because [they] disagree with their speech." *Knight First Amendment Institute, et. al., v. Donald J. Trump, et. al.*, No. 18-1691-cv, slip op. at 4 (2d Cir. 2019) (decided July 9, 2019). Twitter is an interactive space which is a designated public forum. *Knight First Amendment Institute v. Trump*, 302 F. Supp. 3d 541, 574 (S.D.N.Y. 2018).
8. The manner in which @AOC uses the @AOC Twitter account makes it a public forum under the First Amendment. Defendant's account is open and accessible to all taking advantage of Twitter's interactive platform to directly engage the AOC's 4.7 million followers. AOC's tweets routinely generate comments both on Twitter and in the general media.

15. Defendant Alexandria Ocasio-Cortez is a Congresswoman representing the 14th District in New York State, which encompasses parts of the Bronx and Queens. AOC operates and/or oversees the operation of a verified Twitter account under the handle @AOC. Defendant, and/or her representatives, have blocked Plaintiff from her @AOC account.

FACTUAL ALLEGATIONS

16. Twitter is a social media platform with millions of active users across the globe, including over 70 million in the United States. It should be noted that Twitter is listed on the New York Stock Exchange under trading symbol "TWTR" and that Mr. Cherry owns stock in Twitter. The platform allows users to publish messages under 280 characters, to republish or respond to others' messages, and to interact with other Twitter users in relation to those messages. Speech posted on Twitter ranges from comedy to commentary, but particularly relevant here is that a significant amount of speech posted on the platform is speech by, to, or about the government.

17. A Twitter "user" is an individual who has created an account on the platform. A user can post "tweets," which contain short messages, to a webpage on Twitter that is the user's account. Tweets can include photographs, videos, and links.

18. A Twitter user's webpage displays all tweets generated by the user, with the most recent tweets appearing at the top of the page. This display is known as a user's "timeline." When a user generates a tweet, the timeline updates immediately to include that tweet. Anyone who can view a user's public Twitter webpage can see the user's timeline.

19. A Twitter user must have an account name, which is an @ symbol followed by a unique identifier (e.g., @AOC), and a descriptive name (e.g., Alexandria Ocasio-Cortez). The account name is called the user's "handle." Alongside the handle, a user's webpage will display the date the user joined Twitter and a button that invites others to "Tweet to" the user. A user's Twitter webpage may also include a short biographical description; a profile picture, such as a headshot; a "header" image, which appears as a banner at the top of the webpage; the user's location; a button labeled "Message," which allows two users to correspond privately; and a small sample of photographs and videos posted to the user's timeline, which link to a full gallery. Thus, part of the webpage for Defendant looks as follows:



Alexandria Ocasio-Cortez

@AOC

Congresswoman for NY-14 (the Bronx & Queens).
In a modern, moral, and wealthy society, no
American should be too poor to live. 100% People-
Funded, no lobbyist .

 Bronx + Queens, NYC  Ocasio2018.com

 Joined April 2010

1,522 Following 4.7M Followers

20. Twitter is set to be publicly accessible by default. Even those without Twitter accounts can have access to view a user's page, though they cannot interact with the Twitter platform.

21. The interaction users have on Twitter with one another is comprehensive; they can direct message privately, publicly, re-tweet each other, favorite/like each

other's comments, engage in multiple person discussion via a Twitter thread which stems from the initial post.

22. Importantly, users can mention each other causing the mentioned user to receive a notification of the post they are mentioned in.
23. Twitter does engage a privacy option which allows for "Protected" tweets.
24. A user whose account is public, such as AOC, but who wants to make his or her tweets invisible and inaccessible to another user can do so by "blocking that user. "Blocking" must be affirmatively done by the user. A user who blocks another user prevents the blocked user from interacting with the first user's account on the Twitter platform. A blocker user cannot see or reply to the blocking user's tweets, view the blocking user's list of followers or followed accounts, or use the Twitter platform to search for the blocking user's tweets. The blocking user will not be notified if the blocked user mentions her; nor will the blocking user see any tweets posted by the blocked user.
25. When the blocked user attempts to follow the blocking user, or to access the Twitter webpage from which the user is blocked, the user will see a message indicating that the other user has blocked him or her from following the account and viewing the tweets associated with the account. This is an example of a notification from Twitter that a user has been blocked:



Alexandria Ocasio-Cortez 

@AOC

@AOC blocked you

You are blocked from following @AOC and
viewing @AOC's Tweets.



THE @AOC ACCOUNT:

26. Defendant has been a public member of Twitter since April 2010. In 2018, AOC was elected to Congress. During her campaign and after, Defendant has regularly used Twitter as a way to communicate her views, positions, advocate for matters, comment on other tweets, re-tweet, and block those whom she does not agree with.
27. AOC has a following of over 4.7 million users on Twitter.
28. AOC regularly posts political messages of both a public nature. Defendants Twitter page was active with over 17 tweets and re-tweets between July 8, 2019 and July 9, 2019 alone. Each of these tweets involves a public interest and matters of official capacity, such as immigration, climate change, public housing, among other topics. These tweets alone contain over 200,000 likes; 50,000 re-tweets; and approximately 20,000 comments.
29. AOC also directly asks for comments from the public on her Twitter page, such as from a tweet published on July 7, 2019: "What's your favorite US National Park to visit? (Any tips for visiting said park also welcome!").

DEFENDANT'S BLOCKING MR. CHERRY FROM @AOC ACCOUNT:

30. Plaintiff, a Verified Twitter user with the handle @TheHarryCherry, has over 9,000 followers.
31. Mr. Cherry, a freelance journalist, often posts comments, replies, and tweets of his own relating to AOC's positions.
32. Mr. Cherry is not the only Verified user on the platform whom AOC has blocked. She has also blocked former New York State Assemblyman Dov Hikind, Congressional Candidate Joseph Saladino, Daily Wire reporter Ryan Saavedra, Author and television opinion host Elizabeth Wheeler, and "Students for Trump,"

the grassroots organization on college campuses which supports President Donald Trump.



Alexandria Ocasio-Cortez 
@AOC

6:20 PM - 8 Jul 2019
241 Retweets 1,424 Likes 
308 241 1.4K



Saladino for Congress 🌟

@JoeySalads

Follow

BRUHHHH, AOC BLOCKED ME!!!!!!
I guess we struck a nerve!
#SaladinoForCongress



Alexandria Ocasio-Cortez

•
OACO

1,711 Likes · 195 Retweets · 1.7K Impressions · 10:44 AM · 9 May 2019

7:44 PM - 9 May 2019

195 Retweets 1,711 Likes



166



195



1.7K





Ryan Saavedra

@RealSaavedra

HAHAHAHAHAHAHAHAHAHAHAHAHAHA

She finally blocked me and it was after I
called out her latest set of lies



Alexandria Ocasio-Cortez

1,021

7:45 PM - 5 Apr 2019

7,041 Retweets 29,053 Likes



5.0K



7.0K



29K





Liz Wheeler

@Liz_Wheeler

Omg hahahah blocked me!

I am ALWAYS respectful & civil. I present facts only, nothing personal. Somebody is threatened by facts & the truth!



Alexandria Ocasio-Cortez

@AOC

7:54 PM - 5 Jul 2019

7,715 Retweets 30,319 Likes

3.8K 7.7K 30K



Students For Trump

@TrumpStudents

After we called out ,

She BLOCKED us...

I guess she couldn't handle the truth 

Students For Trump

[View profile](#)

[Send direct message](#)

If you're going to launch such an outlandish accusation of inhumane treatment, you're going to need to present proof..

Because if you just made this up for political gain, you are BEYOND disgusting.

We'll wait.



Alexandria Ocasio-Cortez

[View profile](#)

12:04 PM - 2 Jul 2019

1,646 Retweets 5,011 Likes



463

1.6K

5.0K

33. Defendant's blocking of Mr. Cherry, and others like him, from the @AOC account prevents or impedes the viewing of Defendant's tweets; from replying to these tweets; from viewing the comment threads associated with these tweets; and from participating in the comment threads.

34. Mr. Cherry, a Jewish journalist, was blocked by AOC solely for condemning her claim that the United States was operating "concentration camps." Various individuals, entities, and organization, including Yad Vashem, the official

Holocaust Museum in Israel, condemned AOC's comparison of migrant detention facilities to concentration camps.

35. The Second Circuit Court of Appeals declared earlier this week that "if the First Amendment means anything, it means that the best response to disfavored speech on matters of public concern is more speech, not less." *See Knight First Amendment Institute*, No. 18-1691-cv, slip op. at 29 (2d Cir. 2019) (decided July 9, 2019)

CAUSE OF ACTION

**Violation of the First Amendment of the U.S. Constitution
(Declaratory and Injunctive Relief)**

36. Plaintiff repeats the allegations set forth above as if fully set forth herein.

37. Defendant's blocking of the Plaintiff from the @AOC account violates the First Amendment because it imposes a viewpoint-based restriction on Mr. Cherry's participation in a public forum.

38. Defendant's blocking Plaintiff from the @AOC account violates the First Amendment because it imposes a viewpoint-based restriction on Mr. Cherry's access to official statements AOC otherwise makes available to the general public.

39. Defendant's blocking of the Plaintiff from the @AOC account violates the First Amendment because it imposes a viewpoint-based restriction on the Plaintiff's ability to petition the government for redress of grievances.

40. Defendant's blocking of Plaintiff from the @AOC account violates the First Amendment because it imposes a viewpoint-based restriction on the right to hear views expressed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Declare Defendant's viewpoint-based blocking of Plaintiff from the @AOC Twitter account to be unconstitutional;
- B. Enter an injunction requiring Defendant to unblock Plaintiff from the @AOC Twitter account, and prohibit Defendant from blocking the Plaintiff, and others similarly situated, from the account on the basis of viewpoint;
- C. Grant any additional relief as may be just and proper.

Dated: July 12, 2019

Respectfully Submitted,

Harry Cherry

Harry Cherry